TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 193

FORD MOTOR COMPANY, PETITIONER,

vs.

GEORGE HUFFMAN, INDIVIDUALLY, AND ON BEHALF OF A CLASS, ETC., ET AL.

No. 194

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, ETC., PETITIONER,

vs.

GEORGE HUFFMAN, INDIVIDUALLY, AND ON BEHALF OF A CLASS, ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 14, 1952
CERTIORARI GRANTED OCTOBER 13, 1952

INDEX

Proceedings in United States Court of Appeals Sixth Circuit

MOTION FOR SUMMARY JUDGMENT—
Filed April 11, 1951.

The plaintiff, George Huffman, etc., moves the court as follows:

(1). That an order be entered herein granting the plaintiff a summary judgment in his favor, upon the complaint filed herein on the grounds that there is no genuine issue as to any material fact.

Herbert H. Monsky,
Attorney for plaintiff,
703 Realty Building,
Louisville 2, Kentucky.
CLay 4879

I hereby certify that I have served a copy of the foregoing motion upon Louis Seelbach, attorney for the defendant, Ford Motor Company; and Sol Goodman, attorney for the defendant, Local 862 UAW-CIO; and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated voluntary association, by and through its agent and International Representative, Roy Cantrell, individually, and as agent and representative, and as a representative member of said organization, by mailing by registered mail to each of them a copy of the above motion in envelopes, properly stamped and addressed and deposited in the United States mail this 10th day of April, 1951.

Herbert H. Monsky,
Attorney for plaintiff.

ANSWER OF FORD MOTOR COMPANY—Filed April 18, 1951.

The defendant, Ford Motor Company, for answer to the complaint in this action states as follows:

1. The defendant admits the allegations of paragraph 1 of the complaint.

2. The defendant admits the allegations of paragraph 2 of the complaint.

3. The defendant admits the allegations of paragraph 3 of the complaint.

4. The defendant admits the allegations of paragraph 4 of the complaint.

5. The defendant admits the allegations of paragraph 5 of the complaint.

6. The defendant admits the allegations of the first sentence of paragraph 6 of the complaint and denies that it has knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 6 of the complaint.

7. The defendant admits the allegations of the first and second sentences of paragraph 7 of the complaint and denies that it has knowledge or information sufficient to form a belief as to the other allegations of paragraph 7 of the complaint.

8. The defendant denies that it has knowledge or information sufficient to form a belief as to paragraph 8 of the complaint.

9. The defendant admits the allegations of paragraph 9 of the complaint, except that it denies knowledge or information sufficient to form a belief as to the number of Louisville employees which the plaintiff seeks to represent as a class in this action.

10. The defendant admits the allegations of paragraph 10 of the complaint, except that it denies that it has knowledge or information sufficient to form a belief as to the number of so-called Class B employees referred to in the complaint.

11. The defendant admits the allegations of paragraph 11 of the complaint.

12. The defendant admits the allegations of paragraph 12 of the complaint.

13. The defendant admits the allegations of paragraph 13 of the complaint.

14. The defendant admits the allegations of paragraph 14 of the complaint.

15. The defendant admits the allegations of paragraph 15 of the complaint.

16. The defendant admits the allegations of paragraph 16 of the complaint, except that it denies that the clauses in the contracts referred to in the complaint give any false seniority status to any employees of the defendant.

17. The defendant admits that the allegations contained in paragraph 17 of the complaint set forth the contention of the plaintiff; denies that the seniority provisions of the contracts referred to in the petition give any preference which is not founded upon differences existing in or as a part of the employer-employee relationship or are an improper or unauthorized exercise of the collective bargaining function or are improper or unsound.

18. The defendant denies the allegations of paragraph 18 of the complaint and asserts that in accordance with the Selective Service Act, 50 U. S. C. A. §308, the plaintiff, upon application to the defendant after his military service, was restored to a position of like seniority, status and pay.

19. The defendant admits that the contentions of the plaintiff are as set forth in paragraph 19 of the complaint, but denies that the Agent contracted away any seniority right of the plaintiff or any member of Class A upon any improper differences between the members of the Bargaining Unit, or at all.

20. The defendant files herewith and makes a part hereof, marked Exhibits "A", "B" and "C" respectively, the following pertinent agreements between Ford Motor Company and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO: (a) Supplementary Agreement re Veterans' Seniority dated July 30, 1946; (b) Agreement between Ford Motor Company and the U. A. W., CIO, dated August 21,

1947; and (c) Agreement between Ford Motor Company and the U. A. W., CIO, dated September 28, 1949.

Wherefore, the defendant, Ford Motor Company, prays that the complaint in this action be dismissed, for its costs herein expended and for all further and proper relief.

Louis Seelbach,
Middleton, Seelbach, Wolford, Willis & Cochran,
Counsel for Ford Motor Company.

Louis Seelbach states that he is one of counsel for the defendant, Ford Motor Company, and that he has, on April 18, 1951, served a copy of the within answer by mailing a copy thereof by United States Mail to Herbert Monsky, Realty Building, Louisville, Kentucky, and to Sol Goodman, Union Trust Building, Cincinnati, Ohio.

Louis Seelbach.

EXHIBIT "A"—Filed April 18, 1951.

SUPPLEMENTARY AGREEMENT

Section 13—(a) Any employee covered by the terms of this contract who left his employment with the Company subsequent to May 1, 1940, in order to perform training or service in the land or naval forces or the Merchant Marine of the United States, (or the armed forces of the allies) or who shall hereafter leave his employment for such purpose while the United States is at war, shall accumulate seniority during his period of such service subsequent to May 1, 1940. He shall be reinstated on the basis of his accumulated seniority, provided that he is discharged under conditions other than dishonorable and makes application for such re-employment within (90) days from the time he is relieved from such training and service in the land or naval forces, or the time of his completion of such service in the Mer-

TRANSCRIPT OF RECORD

Proceedings of the District Court of the United States for the Western District of Kentucky, at a regular term of Court begun and held at the Federal Court Room in the City of Louisville, on the 2d day of October, 1950.

Present: Honorable Roy M. Shelbourne, Judge of the United States District Court for the Western District of Kentucky.

George Huffman, individually and on behalf of a class etc., Plaintiff,

v.

Ford Motor Company, a corporation; International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated voluntary association, Defendants.

Be It Remembered that on the 21st day of February 1950 the above styled case was filed in this court, being Civil No. 2079, and the Petition is in words and figures as follows:

UNITED STATES DISTRICT COURT
Western District of Kentucky
(At Louisville)

George Huffman, individually, and on behalf of a class, etc., Plaintiff,

v. No. 2079

Ford Motor Company, a corporation; International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated voluntary association,

By and through its agent and International Representative, Roy Cantrell, individually, and as agent and representative, and as a representative member of said organization and

Local 862, UAW-CIO, an unincorporated voluntary association, by and through, its chief officer and agent, O. W. Hammons, individually, and as president of said Local 862, and as a representative member of said International Union and said Local 862, Defendants.

PETITION FOR A DECLARATORY JUDGMENT—
Filed February 21, 1951.

The plaintiff, George Huffman, states that:

1. He brings this action seeking a declaratory judgment for himself, individually, and on behalf of the class (hereinafter defined and described) of which he is a member.

2. He is a citizen of the Commonwealth of Kentucky.

3. The defendant, Ford Motor Company, hereinafter referred to as "Ford", is a corporation created and existing under the laws of the State of Delaware, and regularly licensed and carrying on its business (of manufacturing and assembling automobiles) in the Commonwealth of Kentucky—as well as in many other states and localities—and operating an establishment at or near Louisville in Jefferson County in the Commonwealth of Kentucky which establishment is referred to hereinafter as the "Louisville Works" in the operation of which Ford employs a large number of employees, hereinafter referred to as the "Louisville Employees."

4. The Louisville Employees are (with some exceptions or exclusions which do not concern us herein) represented by a statutory collective bargaining agency, hereinafter referred to as the "Agent", which has such status and functions as the exclusive Agent pursuant to the provisions of the federal statute, the Labor Management Relations Act, 19[illegible] (29 U. S. C. 141 et seq.), and which has been authorized by procedures pursuant to such federal statute to negotiate with Ford for, and has negotiated and now has in effect a contractual provision requiring all Louisville Employees to be members of the labor organization which is the Agent.

5. The defendant, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations, is commonly referred to as UAW-CIO and is hereinafter called the "International." It is a voluntary unincorporated association which is a labor organization which was created and which exists as the result of the voluntary association together of workers for collective bargaining purposes. It is a parent labor organization composed of workers associated together and organized in subordinate or local unions, chartered

as subordinate bodies by the International which consists of all the subordinate or local bodies, the members of which are (by virtue of being such) the membership of the International which is governed by the membership through and by means of representative and democratic processes. The International is the Agent of the Louisville Employees.

6. The International has a great and numerous membership totalling in excess of One (1,000,000) Million residing in and citizens of many different states and jurisdictions, by reason of all of which it is impractical to bring them before the court excepting by service of process upon a representative or agent of the International. Roy Cantrell is an agent and representative of the International in the jurisdiction of this court (having the title and duties of International Representative and functioning as such pursuant to the International's Constitution) upon whom process may be served which will adequately apprise the International of the pendency of this action.

7. The Louisville Employees are members of a subordinate or local union, chartered by the International as such, which is known as Local 862 thereof (hereinafter called the "Local"), which is a voluntary unincorporated association functioning as a labor organization and representing the Louisville Employees for collective bargaining purposes pursuant to a collective bargaining agreement (hereinbelow set forth) between Ford and the International. The Local has a numerous membership, numbering in excess of One (1,000) Thousand, citizens for the most part of Kentucky and Indiana, by reason of all of which it is impractical to bring them before the court excepting by service of process upon an officer, agent or representative of the Local. O. W. Hammons is the chief officer, agent or representative of the Local, being its duly elected and active president upon whom process may be

served which will adequately apprise the Local of the pendency of this action.

8. The aforesaid Roy Cantrell and O. W. Hammons as well as being agents of the International and Local, respectively, are both members of the International and the latter is a member of the Local, by reason of which facts both are made defendants herein, individually, and as representative members of the class of members of the International and Local as well as in their official capacities.

9. The declaratory judgment sought herein presents to the court for its decision a controversy as to the validity of a clause of the collective bargaining agreements between Ford and the International currently in force and effect bearing upon the seniority rights of certain of the Louisville Employees. The plaintiff and approximately 275 other of the Louisville Employees constitute a class in that their positions on the seniority roster at Ford's Louisville Works have been lowered on said seniority roster to positions lower than his, and their true hiring-in dates would entitle them by reason of the contract clause of whose validity complaint is made herein. It is on behalf of the class of employees at the Louisville Works whose seniority rights have been infringed by the complained-of clause that plaintiff prosecutes this action, as well as on his own behalf. Such complaining class is hereinafter referred to as "Class A."

10. Among the Louisville Employees is another class of employees (hereinafter referred to as "Class B") of approximately the same number as Class A whose positions on the seniority roster at the Louisville Works have been improved and stand higher than their true hiring-in date would entitle them excepting for the application of the complained-of clause of the collective bargaining contracts.

11. The International and the Local, separately and jointly, approved and negotiated the complained-of

clause which prefers Class B over Class A, and have been and are administering and enforcing said clause of, and said collective bargaining agreements, and are the appropriate and proper representatives of the members of Class B to represent the members of said Class B as a class in this action.

12. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000.00) Dollars.

13. The August 21, 1947 collective bargaining agreement between Ford and the International contains the following clause (Article VIII—Seniority, Sec, 13 (d)):

> "It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employ of the Company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941, in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period."

14. Article VIII, Sec. 12 (c) of the September 28, 1949 collective bargaining agreement between the same parties reads as follows:

> "Any employee who, prior to the effective date of this Agreement, has received the seniority credit provided for in Article VIII, Section 13 (c) or (d) of the Agreement between the Company and the Union dated August 21, 1947, or the comparable provisions in the supplementary agreement between the Company and the Union dated July 30, 1946, shall continue to receive such seniority credit."

15. The plaintiff has been an employee of Ford since on or about September 23, 1943. He was inducted into the military service of the United States on November 18, 1944 and was discharged on July 1, 1946 and within Thirty (30) Days after being so

discharged was re-employed by Ford with his seniority unimpaired and continuing to date from his original hiring in date as provided by the federal statute (50 U. S. C. App. 308).

16. Since his return to his employment, this plaintiff, and Class A employees generally, have been laid-off, or furloughed, at times and for periods when he and they would not have been so laid-off or furloughed excepting for the complained-of clause hereinabove cited. Class B employees have continued to work during these periods in his place and stead and in the place and stead of Class A employees who would have not worked excepting for the false seniority status acquired by them by means of the complained-of clause to the detriment of this plaintiff and the members of Class A. As a result thereof, he and they have suffered great monetary loss and damage in being deprived of their work and the consequent loss of pay they would otherwise have earned amounting to many thousands of dollars.

17. It is the contention of the plaintiff that the complained-of clause is improper and invalid and void, because it is outside the scope of the authority of a statutory collective bargaining agent to negotiate concerning matters which are not a proper subject of collective bargaining, and for the Agent herein (which is authorized to bargain for a class consisting of all workers employed in the bargaining unit as workers in that unit) to bargain for preference over one worker or group of workers within the unit in favor of another—whether either group be minority or majority—when such preference is not grounded upon differences existing in or a part of the employer-employee relationship, is an improper and unauthorized exercise of the collective bargaining function.

18. Plaintiff's seniority rights were preserved to him by the Congress of the United States so that he could return to his employment upon being dis-

charged from the military service of the United States without impairment of his standing on the seniority roster and as if he had not been absent, and for the Agent herein to arrogate to itself power to go further than the Congress, and in so doing impair the status so preserved for this plaintiff, is an improper and unauthorized extension of the collective bargaining function into the domain of public policy and an encroachment into the areas in which the Agent is without authority to act.

19. Plaintiff contends that the Agent herein was and is without authority to contract away the seniority rights of the plaintiff or any member of Class A upon any basis of discriminations based upon differences between the members of the bargaining unit not relevant to the actual conditions of work and of employment to which they are to be applied, and differences relative to differing race, color or creed, or between World War I veterans and World War II veterans, or between blue-eyed workers and brown-eyed workers are not proper subjects of collective bargaining.

Wherefore the plaintiff, George Huffman, for himself and on behalf of the class for which he sues prays the court:

(1) To permit him to prosecute this action for himself and as representative of and for the benefit of all members of Class A as defined herein.

(2) To permit and direct the International and the Local herein to defend this action for themselves, for their members, and as representatives of all members of Class B as defined herein.

(3) To adjudge, deem and declare that so much of the collective bargaining agreement in effect between Ford and the Agent herein as discriminates against and infringe the seniority rights of the members of Class A herein in favor of the members of Class B is null and void and invalid.

(4) To order Ford to revise its seniority roster at the Louisville Works so as to eliminate all discrimination against Class A members of the bargaining unit and reflect

the true hiring-in date of all employees with due credit for their military service as provided and required by the federal statute, the Selective Service Act.

(5) For the costs of this action, and

(6) For all proper, general and consequential relief and orders which to the Court may appear meet and proper.

Herbert H. Monsky,
Counsel for Plaintiff,
703 Realty Bldg.,
Louisville 2, Kentucky.
CLay 4879

Commonwealth of Kentucky }
County of Jefferson } ss.

George Huffman, being first duly sworn, says that he is the above-named plaintiff; that he has read and knows the contents of the foregoing Petition for a Declaratory Judgment; that the same is true as he verily believes.

George H. Huffman.

Subscribed and sworn to before me this February 20, 1951. My commission expires August 30, 1953.

Herbert H. Monsky,
N.P. J.C., Ky.

ORDER Entered May 23, 1951.

This cause coming on to be heard upon the pleadings and the motions for a summary judgment and arguments of counsel, and the Court, being sufficiently advised, is of the opinion that the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the union and is not a device of hostility to veterans. The Court finds that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful.

Wherefore, it is ordered by the Court that the motion of the plaintiff for a summary judgment be, and the same is hereby, overruled, and the motions of the defendants for a summary judgment be, and the same are hereby, sustained, and it is further ordered that the action be dismissed at the cost of plaintiff, to all of which plaintiff excepts.

Roy M. Shelbourne,
Judge.

Have seen.
Sol Goodman,
Atty. for UAW-CIO.

Louis Seelbach,
Atty. for Ford Motor Co.

NOTICE OF APPEAL TO UNITED STATES COURT OF APPEALS FOR THE SIXTH DISTRICT—Filed June 20, 1951.

Notice is hereby given that George Huffman, the plaintiff above named, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the order entered by the Honorable Roy Shelbourne, Judge of the United States District Court, Western District at Louisville on May 23, 1951, sustaining the defendants' motion

for a summary judgment and dismissing the plaintiff's complaint at the plaintiff's cost.

Herbert H. Monsky,
Counsel for Plaintiffs,
703 Realty Bldg.,
Louisville, Kentucky.
CLay 4879.

STIPULATION AS TO RECORD ON APPEAL—
Filed July 13, 1951.

It is hereby stipulated by the Attorneys for the respective parties hereto,—the defendant, Ford Motor Company, being hereinafter referred to as "Ford"; the defendants, International Union, United Automobile, Aircraft and Agricultural Workers, its Local No. 862, and the individual members, officers, agents and representatives thereof being referred to collectively hereinafter as "UAW"—that the following shall constitute the transcript of record on appeal herein:

1. Petition.
2. Answer of Ford..
3. Plaintiff's motion for summary judgment.
4. UAW's motion for summary judgment.
5. UAW's answer.
6. Ford's motion for summary judgment.
7. Order (of May 23, 1951) sustaining defendants' motions for summary judgment and dismissing plaintiff's petition.
8. Only the relevant portions of the exhibits heretofore filed herein are to be copied, which relevant portions are stipulated to be:

A. That portion of Ford's Exhibit "A" designated therein as replacing Section 13 of Article VIII of the

agreement between Ford and UAW dated February 26, 1946.

B. That portion of Ford's Exhibit "B" identified therein as Section 13 (entitled "Veterans") of Article VIII (entitled "Seniority") of the agreement between Ford and UAW, dated August 21, 1947.

C. That portion of Ford's Exhibit "C" identified therein as Section 12 of Article VIII of the agreement between Ford and UAW, dated September 28, 1949.

9. Notice of Appeal.

10. This stipulation.

Herbert H. Monsky,
Counsel for Plaintiff.

Middleton, Seelbach, Wolford, Willis & Cochran,
Counsel for Ford.

Sol Goodman,
Counsel for UAW.

CLERK'S CERTIFICATE.

I, W. T. Beckham, Clerk of the United States District Court for the Western District of Kentucky, certify that the foregoing is a true and complete transcript of the record in Civil Action No. 2079 as called for by the Stipulation of record on appeal and as of record in my office.

W. T. Beckham, Clerk,
U. S. District Court.

PROCEEDINGS IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

(December 7, 1951—Before: HICKS, ALLEN and MCALLISTER, J.J.)

This cause is argued by Herbert H. Monsky for appellant and by Sol Goodman and Louis Seelbach for appellees and is submitted to the court.

JUDGMENT

(Filed March 3, 1952)

Appeal from the District Court of the United States for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Kentucky, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and the case is remanded to the district court for further proceedings in accordance with the opinion herein.

chant Marine; and provided further that if such employee is unable to work by reason of physical disability during said period of ninety (90) days, his application may be made within ninety (90) days from the time disability has ended. Probationary employees shall be entitled to credit for the period of such service toward the completion of the probationary period and the accumulation of seniority thereafter.

(b) It is understood and agreed that none of the employees covered by this contract has been or is employed in a temporary position, within the meaning of that term as used in the Selective Training and Service Act of 1940, as amended.

(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine and who is a citizen of the United States and served with the allies and who has been honorably discharged from such training and service and who is hired by the company after he is relieved from training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941, provided:

(1) Such veteran must apply for employment within ninety (90) days from the time he is relieved from such training or service in the land or naval forces or the time of his completion of such service in the Merchant Marine, and must obtain such employment within twelve (12) months from the time he is relieved from such training and service in the land or naval forces or the time of his completion of such service in the Merchant Marine.

(2) Such veteran shall not have previously exercised his right in any plant of this or any other company.

(3) A veteran so employed shall submit his service discharge papers to the company at the end of

aforesaid probationary period of employment and the company shall place thereon in permanent form a statement showing that the veteran has exercised this right, such statement to be signed by representatives of the company and the Union, and a copy thereof placed in the employee's record and a copy furnished to the Union.

(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employee of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941 in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period.

(e) Any employee covered by the terms of this contract who left the employment of the Ford Motor Company subsequent to May 1, 1940 in order to perform training or service in the land or naval forces or the Merchant Marine of the United States or any of the United Nations, and who has incurred a disability during the period of such service, which disability prevents him from doing the work of the position which he held at the time of his entry into said land or naval forces or said Merchant Marine shall be treated in the first instance only the same as any employee who has been incapacitated at his regular work by injury or compensable occupational disease, as set forth in Article VIII, Section 12 of the contract of February 26, 1946; such employee may be placed by the company on a job which the employee is able to do, irrespective of the employee's seniority provided that if the employee is capable of performing any one of a group of jobs in the seniority group in which he is to be placed he shall displace the employee with the least seniority in such group of job classifications, provided, however, that the employee shall take with him to such job all of his plant seniority and in the event of a reduction in force shall exercise his seniority on such new job as is provided for in Article VIII, Section 1B (Sub-Sections (1)-17)). An employee who desires to take advantage of this section must within thirty (30) days

of the time he applies for reinstatement have furnished to the Employment Office of the company a certificate from the Veterans Administration that he sustained an injury while serving in the Armed Forces or the Merchant Marine of the United States or the armed forces of any of the United Nations. The Union will be advised of the identity of employees who apply for rights under this section and the nature and extent of the injuries sustained by such employees.

(f) Any veteran who, within one (1) year after his reinstatement or in the case of such reinstated veterans presently employed, within one (1) year from the date hereof, make application therefor to the Employment Office of the Company, shall be granted a leave of absence for a period of one (1) year in order to take advantage of the educational program offered by the Government in Public Law No. 16 and/or 346 of the Seventy-eighth Congress, and such leave of absence, upon application therefor to the Employment Office, will be extended from year to year while the veteran is atending school at Government expense. Seniority shall continue to accrue during such leave of absence provided the veteran makes application for reinstatement to employment within thirty (30) days from the time he has completed or discontinues the educational course, but in no event longer than his leave of absence.

EXHIBIT "B"—Filed April 18, 1951.

ARTICLE VIII SENIORITY

VETERANS

Section 13. (a) Any employee covered by the terms of this contract who left his employment with the Company subsequent to May 1, 1940, in order to perform training or service in the land or naval forces or the Merchant Marine of the United States, (or the armed forces of the allies) or

who shall hereafter leave his employment for such purpose while the United States is at war, shall accumulate seniority during his period of such service subsequent to May 1, 1940. He shall be reinstated on the basis of his accumulated seniority, provided that he is discharged under conditions other than dishonorable and makes application for such re-employment within ninety (90) days from the time he is relieved from such training and service in the land or naval forces, or the time of his completion of such service in the Merchant Marine; and provided further that if such employee is unable to work by reason of physical disability during said period of ninety (90) days, his application may be made within ninety (90) days from the time disability has ended. Probationary employees shall be entitled to credit for the period of such service toward the completion of the probationary period and the accumulation of seniority thereafter.

(b) It is understood and agreed that none of the employees covered by this contract has been or is employed in a temporary position, within the meaning of that term as used in the Selective Training and Service Act of 1940 as amended.

(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the Land or Naval forces or the Merchant Marine and who is a citizen of the United States and served with the Allies and who has been honorably discharged from such training and service and who is hired by the Company after he is relieved from training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941, provided:

(1) Such veteran must apply for employment within ninety (90) days from the time he is relieved from such training or service in the land or naval forces or the time of his completion of such service in the Merchant Marine, and must obtain such employment with-

in twelve (12) months from the time he is relieved from such training and service in the land or naval forces or the time of his completion of such service in the Merchant Marine.

(2) Such veteran shall not have previously exercised this right in any plant of this or any other company.

(3) A veteran so employed shall submit his service discharge papers to that company at the end of aforesaid probationary period of employment and the Company shall place thereon in permanent from a statement showing that the veteran has exercised this right, such statement to be signed by a representative of the Company and the Union, and a copy thereof placed in the employee's record and a copy furnished to the Union.

(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employ of the Company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941 in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period.

(e) Any employee covered by the terms of this contract who left the employment of the Ford Motor Company subsequent to May 1, 1940 in order to perform training or service in the land or naval forces or the Merchant Marine of the United States or any of the United Nations, and who has incurred a disability during the period of such service, which disability prevents him from doing the work of the position which he held at the time of his entry into said land or naval forces or said Merchant Marine shall be treated in the first instance only the same as any employee who has been incapacitated at his regular work by injury or compensable occupational disease, as set forth in Article VIII, Section 12 of the Contract of February 26, 1946; such employees may be placed by the Company on a job which the employee is able to do, irrespective of the employee's seniority provided that if the employee is capable of per-

forming any one of a group of jobs in the seniority group in which he is to be placed he shall displace the employee with the least seniority in such group of job classifications, provided, however, that the employee shall take with him to such job all of his plant seniority and in the event of a reduction in force shall exercise his seniority on such new job as is provided for in Article VIII, Section 1B (subsection (1)-(17)).

An employee who desires to take advantage of this section must within thirty (30) days of the time he applies for reinstatement have furnished to the Employment Office of the Company a certificate from the Veteran's Administration that he sustained an injury while serving in the United States or the Armed Forces of any of the United Nations. The Union will be advised of the identity of employees who apply for rights under this section and the nature and extent of the injuries sustained by such employees.

(f) Any veteran who, within one (1) year after his reinstatement or in the case of such reinstated veterans presently employed, within one (1) year from the date hereof, make application therefor to the Employment Office of the Company shall be granted a leave of absence for a period of one (1) year in order to take advantage of the educational program offered by the Government in Public Law No. 16 and/or 346 of the Seventy-Eighth Congress, and such leave of absence, upon application therefor to the Employment Office, will be extended from year to year while the veteran is attending school at Government expense. Seniority shall continue to accrue during such leave of absence provided the veteran makes application for reinstatement to Employment within thirty (30) days from the time he has completed or discontinued the educational course, but in no event longer than his leave of absence.

EXHIBIT "C"—Filed April 18, 1951.

ARTICLE VIII

SENIORITY

VETERANS

Section 12. (a) Any employee covered by the terms of this Contract who had left his employment with the Company subsequent to May 1, 1940, in order to perform training or service in the Land or Naval Forces or the Merchant Marine of the United States (or the armed forces of the allies) and who, prior to the effective date of the Agreement, had been reinstated following such training or service in accordance with Section 13(a) of the Agreement between the Company and the Union dated August 21, 1947, or the comparable provisions of any preceding agreement shall be credited with seniority for the period of such training or service in computing his seniority under this Agreement.

(b) Employees now serving in the Armed Forces of the United States or employees who shall hereafter serve in the Armed Forces of the United States shall be entitled to reinstatement upon the completion of such service to the extent and under the circumstance that reinstatement may be required by the applicable laws of the United States, provided that any employee whose discharge from service is other than dishonorable, shall be accorded the same reinstatement rights as such laws provide in the case of persons honorably discharged. If the employee is unable to apply for reinstatement by reason of physical disability during the period within which such application is required by law to be made, application must be made within ninety (90) days from the time such disability is ended. For the purpose of this Section, it is understood that none of the employees covered by this Agreement has been or is employed in a temporary position within the meaning of that term as used in the Selective Service and Training Act of 1940, as amended, or as used in the Selective Service Act of 1948, and that probationary employees shall be entitled to credit for the period of such service toward the completion of the probationary period as well as the accumulation of seniority thereafter.

Exhibit "C"

(c) Any employee who, prior to the effective date of this Agreement, has received the seniority credit provided for in Article VIII, Section 13(c) or (d) of the Agreement between the Company and the Union dated August 21, 1947, or the comparable provision in the Supplementary Agreement between the Company and the Union dated July 30, 1946, shall continue to receive such seniority credit.

(d) An employee reinstated following a period of training or service in the land or naval forces or the Merchant Marine of the United States (or the armed forces of the allies) as provided in Sub-sections (a) and (b) of this Section who has incurred, during the period of such service, a disability which prevents him from doing the work of the position to which he would otherwise be reinstated shall be treated, in the first instance only, the same as an employee who has been incapacitated at his regular work by injury or compensable occupational disease as set forth in Section 11 of this Article. Such an employee may be placed by the Company on a job which he is able to do, irrespective of his seniority. If he is capable of performing any one of a group of jobs in the seniority group in which he is to be placed he shall displace the employee with the least seniority in such group of jobs. He shall take with him to such job all of his plant seniority and in the event of a reduction in force shall exercise his seniority on such new job as is provided for in Section 1-B, Sub-sections (1) through (18) of this Article.

To be eligible for the benefits set forth in this Sub-section, the employee must have furnished to the employment office for his plant within thirty (30) days of the time he applied for reinstatement a certificate from the Veterans' Administration, that he sustained an injury while in such service. The Union will be advised of the identity of employees furnishing such certificates, and of the nature and extent of the injuries sustained by such employees.

(e) Any reinstated veteran who makes application therefor to the employment office for his plant shall be granted a leave of absence for a period of one year in order to take fulltime institutional training at government

Exhibit "C"

expense under the educational program offered by the United States in Public Law Number 16 and/or Number 346 of the Seventy-eighth Congress, and upon application therefor to the employment office, shall be granted yearly extensions of such leave of absence while continuing such training. The employee shall be reinstated and credited with seniority for the period of such leave provided he makes application to the employment office for reinstatement within thirty (30) days from the time he has completed or discontinued such institutional training, and not later than five (5) days following expiration of his leave of absence.

MOTION FOR SUMMARY JUDGMENT—
Filed May 4, 1951.

Come now defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated voluntary association, by and through its agent and International Representative, Roy Cantrell, individually, and as agent and representative, and as a representative member of said organization, and Local 862, UAW-CIO, an unincorporated voluntary association, by and through its chief officer and agent, O. W. Hammons, individually, and as president of said Local 862, and as a representative member of said International Union and said Local 862, and move the Court for a summary judgment, in their favor upon the complaint and answer filed herein, on the ground that there is no issue of fact.

Sol Goodman,
Attorney for Union.

ANSWER—Filed May 4, 1951.

Come now defendants, International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated voluntary association, by and through its agent and International Representative, Roy Cantrell, individually, and as agent and representative, and as a representative member of said organization, and Local 862, UAW-CIO, an unincorporated voluntary association, by and through its chief officer and agent, O. W. Hammons, individually, and as president of said local 862, and as a representative member of said International Union and said Local 862, and for answer to the complaint herein, admit and deny as follows:

(1) Admit that this action is being brought by plaintiff for himself, but deny that it is being brought on behalf of anyone other than plaintiff; admit that plaintiff is a citizen of the Commonwealth of Kentucky, admit the allegations in paragraphs 3, 4, 5, 6, 7, 8, and without admitting any conclusions or without admitting any of the allegations heretofore denied and to the extent only of making up the issue, admit the allgeations contained in paragraphs 9, 10, 11, 13, 14, 15, and 16.

(2) Defendants deny the allegations contained in paragraphs 12, 17, 18 and 19, and further generally deny each and every allegation in the petition heretofore admitted to be true.

(3) Defendants deny that plaintiff brings this action as a representative of others, and specifically states that plaintiff, as well as the others referred to by him and claimed by him as members of a class, are members of the defendant union and that under the Constitution of said union, plaintiff and said others are specifically prohibited from resorting to any court, unless and until they have exhausted all their rights and remedies within said union and that by reason thereof, plaintiff's petition does not set forth a cause of action, because it does not set forth that he has exhausted the remedies provided for him under the Constitution of said union. Said union Constitution specifically providing as follows:

"In no case shall a member or subordinate body appeal to a Civil Court for redress until he or it has exhausted his or its rights of appeal under the laws of this International Union. Any violation of this section shall be cause for summary suspension or expulsion, or for revocation of Charter, by a two-thirds vote of the International Executive Board."

(4) Defendants specifically deny that this Court has jurisidiction over this cause because all the defendants named are necessary and indispensable parties, and the defendant unions have many members who are citizens of the Commonwealth of Kentucky as is plaintiff, and by reason thereof, no diversity of citizenship exists. Plaintiff's cause of action is not grounded or based upon the federal statute referred to (58 USCA 308) because plaintiff does not claim that he was denied his rights to seniority during the period of one year, after reemployment; but contends that other parties are given equal seniority by reason of a bargaining contract. This action is, therefore, not brought under any federal law specifically giving jurisdiction to this Court and by reason thereof, this Court cannot entertain this action.

(5) For a further defense, defendants state that the provisions of the contract as set out in paragraphs 13 and 14 of the petition are valid provisions and were entered into between the employer on the one hand and the defendants as the bargaining agent for all employees on the other hand, and are fully effective as a valid bargaining contract.

Wherefore defendants pray that upon consideration the Court dismiss the petition herein on the ground;

(1) that the action was improperly brought,

(2) that this Court has no jurisdiction over the cause of action, or

(3) if the Court decides that it has jurisdiction and that the action has been properly instituted; that the Court declare and find that the defendant unions as bargaining agents for the employees of the defendant

company entered into a legal, valid and binding contract, which contract is in full force and effect in accordance with the terms as set forth in said contract.

Sol Goodman,
Attorney for Defendants.

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, an unincorporated voluntary association,

By and through its agent and International Representative, Roy Cantrell, individually, and as agent and representative, and as a representative member of said organization and,

Local 862, UAW-CIO, an unincorporated voluntary association, by and through, its chief officer and agent, O. W. Hammons, individually, and as president of said Local 862, and as a representative member of said International Union and said Local 862.

MOTION—Filed May 22, 1951.

The defendant, Ford Motor Company, moves the Court for a summary judgment in its favor upon the pleadings in this action.

Louis Seelbach,
Middleton, Seelbach, Wolford, Willis & Cochran,
Attorneys for Defendants.

The detriment suffered by Huffman's class, as a class, was no different from that suffered by all the employees who were not veterans. Whether veterans or non-veterans, all Ford employees felt the impact equally.

Huffman stepped back on the seniority escalator at the place where he would have been had he remained in Ford's employ. His position among the non-veteran employees was the same as it was before military service. The integration of non-previously employed veterans among that whole group, of which Huffman's class was a part, therefore affected the other employees, who were not veterans, in the same way it affected Huffman's class of veterans. The non-veterans were retarded in their seniority, to the same extent as the veterans of Huffman's class were retarded.

The seniority thus provided for non-previously employed veterans affected, not merely Huffman's class alone, but all Ford employees without regard to their status as veterans. There was, therefore, no discrimination of any kind against Huffman's class. If discrimination exists at all, it was against all Ford employees whether veterans or non-veterans, and not against Huffman's class.

The length and breadth of Huffman's right under the Selective Training and Service Act was to re-enter employment without loss of seniority. This he did.

When re-entered, and when not "discharged from such position without cause within one year after such restoration" the statute was satisfied in full. This was done.

Thereafter, Huffman no longer has any preferential right under the statute. Huffman's viewpoint then became the same as the viewpoint of every other Ford employee, and he was no longer distinguishable from other Ford employees. His right then was no greater than the right of other Ford employees, whether veteran or non-veteran. The Court's opinion, however, has the effect of continuing forever the status which Huffman occupied "within one year after such restoration." It effectively prevents, after expiration of that one year, any adjustment of seniority rights which might adversely affect some previously employed ex-veteran. It extends the effect of the Selective Training and Service Act beyond the intention of Congress.*

The erroneous assumption is that after expiration of that one year, Huffman continues to be clothed with some type of preferential statutory right which makes him thereafter immune to an adjustment of seniority status of all the employees.

(2)

"Discrimination," as such, is not involved in the extension of limited seniority rights to non-previously employed veterans.

The word "discrimination" means to make a difference of treatment or favor of one as compared with others. Admittedly all discrimination is not unlawful. No law or reason prohibits seniority plans which dis-

*As pointed out in Ford's Brief (pp. 15-24), Huffman's claim of "lay-off" is not referrable to the "one year after such restoration" because the pleadings involve only the time which has elapsed since "that one year after such restoration."

criminate between employees on the basis of such differences among them as competence, skill, sex, departmental status, date of employment and marital status.

Aeronautical Lodge v. *Campbell*, 337 U. S. 521, upholds "discrimination" against veterans in favor of Union chairmen upon the ground that the gain in continuity of administration is a benefit to all.

A contract giving greater seniority to married men than to single men, or greater seniority to men with children than to men without children, or greater seniority to men with eight children than to men with two children, by the same token discriminates in their favor, but that is lawful discrimination, discrimination which beneficially affects the relationship between the employer, and all the employees.

By a parity of reasoning, the extension of partial seniority to non-previously employed veterans, because of military service, beneficially affects the entire group of employees because,

(1) A legitimate concern of the Union, its members, all employees, and the employer, is to avoid low morale, dissatisfaction and friction among employees because of wide differences in seniority status;

(2) New employees, with previous military service, would be hard to obtain if they were penalized because of military service upon obtaining new employment;

(3) It is unfair and inequitable to give to some employees benefits because of military service, and not to give to the remaining employees all or some of the same benefits.

If veteran status is a sufficient basis for legislative discrimination, as exemplified by the Selective Training and Service Act, and other enactments respecting Civil Service status, pensions, and medical benefits for veterans, it follows that veteran status is also an appropriate basis for special treatment by contract, especially when that contract is negotiated on behalf of *all* employees—without distinction as to race, creed, religion, or Union affiliation—and is without any element of "hostility to veterans."

The statement in the opinion that,

> "The end result for Huffman and those similarly situated is the same as if there had been deliberate hostility * * * it penalizes Huffman for working for Ford before his military service."

does not correctly describe the situation here. In fact, the end result for Huffman is no different than the end result for Ford non-veteran employees, and Huffman suffers no penalty which is not suffered to the same extent by every other non-veteran employee. Huffman loses nothing whatever because of service to Ford before military service, because he receives full seniority credit for time spent in Military Service.

The Court overlooks the fact that the Union here represented not only the employees in Huffman's class (those veterans previously employed by Ford) and the employees who had never previously worked for Ford (non-previously employed veterans), but also that large body of remaining employees who had never served in the Armed Forces at all (non-veterans).

OPINION

(Filed March 3, 1952)

Before HICKS, Chief Judge; ALLEN and MCALLISTER, Circuit Judges.

ALLEN, Circuit Judge. The principal question presented by this appeal is the validity of a seniority provision in a collective bargaining agreement between appellee Ford Motor Company, the employer, and appellee International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO. Petition for declaratory judgment, and answers by both appellees were filed. All parties moved for summary judgment. The court sustained the motions of the appellees and dismissed the action.

The case arises out of the following facts, which are uncontradicted:

Huffman, the appellant, was employed by the Ford Motor Company September 23, 1943. He entered the military service of the United States November 18, 1944, and was discharged July 1, 1946. Within thirty days he was reemployed by Ford, as his petition states, "with his seniority unimpaired and continuing to date from his original hiring-in date as provided by the federal statute (50 U. S. C. App. 308)."

Huffman, a member of the CIO, is still employed by the Ford Motor Company. His petition for declaratory judgment alleges in substance that he and approximately 275 other employees at the Ford plant in Louisville, Kentucky, constitute a class whose positions on the seniority roster have been made lower than they rightfully would be under their true hiring-in dates. He alleges that employees of another class have had their positions on the seniority roster at the Louisville plant improved and stand higher than they rightfully would under their true hiring-in dates, due to a clause of the applicable collective bargaining contract between Ford and the CIO. These allegations are admitted by the CIO and by Ford with exception of the number of employees in each class.

July 30, 1946, prior to Huffman's reinstatement, the CIO and Ford made the following agreement:

> "Section 13-(a) Any employee covered by the terms of this contract who left his employment with the Company subsequent to May 1, 1940, in order to perform training or service in the land or naval forces or the Merchant Marine of the United States, (or the armed forces of the allies) or who shall hereafter leave his employment for such purpose while the United States is at war, shall accumulate seniority during his period of such service subsequent to May 1, 1940. He shall be reinstated on the basis of his accumulated seniority. . . ."
>
> "(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service . . . and who is hired by the company after he is relieved from training and service . . . shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941, provided:
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> * * * * * * * * * *
>
> "(2) Such veteran shall not have previously exercised his right in any plant of this or any other company.
>
> * * * * * * * * * *
>
> "(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employ of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941 in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their preliminary period."

Contracts negotiated between Ford Motor Company and the CIO in 1947 and 1949 readopted substantially the same provisions as to seniority rights of veterans.

Opinion.

Since the appellees both moved for summary judgment, the facts alleged in the petition must be taken as true unless by the admissions, depositions or other evidence introduced the contrary appears. *McCombs* v. *West,* 155 Fed. (2d) 601 (C. A. 5). But the material allegations of the petition were admitted by both appellees. This, therefore, was a proper case for summary judgment; *McComb* v. *Southern Weighing & Inspection Bureau,* 170 Fed. (2d) 526 (C. A. 4); *Harris Stanley Coal & Land Co.* v. *Chesapeake & Ohio Ry. Co.,* 154 Fed. (2d) 450 (C. A. 6), certiorari denied, 329 U. S. 761; and the question presented is one of law as to the validity of the collective bargaining contract under which Huffman and those similarly situated were deprived of their seniority in layoffs and furloughs in favor of veterans later employed but with longer military service.

Huffman alleges that the enforcement of these contracts results in discriminatory layoffs and furloughs of himself and those similarly situated. He contends that veterans with longer periods of military service but shorter periods of employment with Ford are favored above Huffman and his class. He therefore claims that the provisions of the contract are discriminatory and void as to him and those similarly situated because they give to veterans not employed at the time they entered military service seniority credits for their period of armed service after June 21, 1941.

The District Court, as the basis for dismissing the action, found: ". . . the Court, being sufficiently advised, is of the opinion that the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the union and is not a device of hostility to veterans. The Court finds that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful."

Huffman first contends that the collective bargaining agreement violates rights of veterans previously employed by the Ford Motor Company, which were secured

under the Selective Training and Service Act of 1940, 50 U. S. C. App., § 308.[1]

We think the District Court correctly held that this contention could not be sustained. This statute, among other things, gives veterans protection within the framework of the seniority system plus a guaranty against demotion or termination of employment without cause for one year after reemployment. *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U. S. 275. But the Supreme Court in that case points out that a furlough or a layoff is not a discharge. The person laid off is put on a waiting list for reassignment. He has a right to be restored to work under specific conditions and insurance and other benefits continue to accrue to him. In the *Fishgold* case the court held that the statute was not violated by a slackening of work which caused the employee to be laid off by operation of a seniority system. It follows that the layoffs and furloughs alleged to have displaced Huffman and others similarly situated in favor of veterans who had been employed later but had been engaged in a longer period of war service, do not violate § 308, 50 U. S. C. App.

A more difficult question is presented as to Huffman's second contention. This is that the CIO and Ford, in the contracts attacked, set up a seniority system which is unlawful because of discrimination. The statute, § 308, 50

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[1] "(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of an employer. . . .

"(B) if such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

* * * * *

"(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration."

U. S. C. App., is construed in the *Fishgold* case, *supra*; *Trailmobile Co.* v. *Whirls*, 331 U. S. 40; *Aeronautical Lodge* v. *Campbell*, 337 U. S. 521; but the proper scope of collective bargaining contracts has not been broadly adjudicated. In *Aeronautical Lodge* v. *Campbell*, discussed later, the change of bargaining contract alleged to be discriminatory was shown to be for the benefit of the entire union. Huffman's principal contention here is that the contract is not for the benefit of the entire union; that the union as bargaining agent was not authorized to contract away his seniority rights, and the rights of those similarly situated. He urges that such a contract cannot legally ignore the factors ordinarily considered relevant in establishing a seniority system, such as length of employment in the service of the particular employer, skill, ability, and merit. He attacks the provision under which some employees are given preference over others in case of layoff's because of military service entered into before employment, that is, upon the basis of matters unconnected with the employment, antedating it and in no way related to the interest of the union as a whole.

The question presented is not whether a legislature could have imposed this change in seniority provisions through the medium of statute. Enactments granting preferences to veterans both in the securing of employment and in ratings for civil service examinations have been passed and are constitutional. Section 459, 50 U. S. C. App.; *Fishgold* v. *Sullivan Drydock and Repair Corp.*, *supra*. Cf. Sections 486-10 and 486-13, Ohio General Code; *State ex rel. King* v. *Emmons et al., State Civil Service Commission*, 128 Ohio St., 216. The question squarely presented is whether the union and management can by contract create preferential seniority in men not employed when they entered the armed services as against men, also veterans, who were employed when they entered the armed services.

The Ford Motor Company and the CIO contend that the case is decided in their favor by *Aeronautical Lodge* v. *Campbell*, *supra*, in which the Supreme Court upheld a collective bargaining contract which gave priority in

layoffs to union officials over other employees. The court held that the provision giving seniority to officials of the union over workers employed earlier than such officials was valid upon the ground that the gain in continuity of administration of the union due to the retention of these officials in case of layoff was a benefit to the entire union membership. The court emphasized the importance of this feature of benefit to the union as a whole. Speaking of the necessity of continuity in service for shop stewards or union chairmen, the court said:

> "Because they are union chairmen they are not regarded as merely individual members of the union; they are in a special position in relation to collective bargaining for the benefit of the whole union. To retain them as such is not an encroachment on the seniority system but a due regard of union interests which embrace the system of seniority rights."

The court declared "it would be an undue restriction of the process of collective bargaining (without compensating gain to the veteran) to forbid changes in collective bargaining arrangements which secure a fixed tenure for union chairmen, whereby veterans as well as non-veterans are benefited by promoting greater protection of their rights and smoother operation of labor-management relations." In making this decision the court pointed out that "All this presupposes, obviously," that the agreement construed "expresses honest desires for the protection of the interests of all members of the Union and is not a skillful device of hostility to veterans."

We see nothing in this ruling which validates contracts made without regard for the protection of the interests of all members of the union. We think that action which results in widespread discrimination is not justified by the lack of definite malice or hostility. Well-meaning desires, not dishonest in the sense of expressing deliberate hostility, may at times, due to failure to consider all pertinent factors, result in discriminatory measures. The

end result for Huffman and those similarly situated is the same as if there had been deliberate hostility. No evidence was presented on the question but we assume that both the union and Ford, in executing this bargaining contract, had a well-meaning desire to protect veterans who had had no chance for employment prior to their service in the armed forces. But in so doing they clearly discriminated against other veterans who had entered the military service when already employed by Ford. We think such a contract is not authorized under the National Labor Relations Act.

Section 157, 29 U. S. C., provides that employees have the right to bargain collectively and "to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." This means that in entering into labor contracts the bargainers must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another. *Gauweiler* v. *Elastic Stop Nut Corp.*, 162 Fed. (2d) 448, 451 (C. A. 3). As pointed out in that case, which was approved by the Supreme Court in *Aeronautical Lodge* v. *Campbell, supra,* no discrimination existed against veteran-employees. "Discrimination," the court declared, "would obviously change the whole picture."

Under the National Labor Relations Act just as under the Railway Labor Act the bargaining representative of the employees rests under the obligation to exercise fairly the power conferred upon it in behalf of all those for whom it acts without discrimination. Cf. *Steele* v. *L. & N. Rd. Co.*, 323 U. S. 192, 202, 203.

It is true, as Ford asserts, that there is no discrimination under the present system between Huffman and the nonveterans of his class. As to nonveterans, he comes back into employment on the same step of the "seniority escalator" where he would have been if he had never been absent in the military service. *Fishgold* v. *Sullivan Drydock & Repair Corp., supra.* Where the discrimination arises is between veterans, like Huffman, who were

employed, left their employment to enter the armed services and were reemployed, in conformity with the statute, and veterans not employed prior to war service. All such veterans who subsequent to June 21, 1941, have served a longer time in the armed forces than Huffman and those similarly situated are given a preferential seniority under a contract provision which has no relevance to terms and conditions of work or the normal and usual subjects of contracts between union and employer.

This was the test laid down by the Supreme Court in *Steele* v. *L. & N. Rd. Co., supra,* 203. In that case the Supreme Court reversed a decision of the Supreme Court of Alabama which upheld a contract between the union and the employer which discriminated against negro firemen. The court declared: "This does not mean that the statutory representative of a craft is barred from making contracts which may have unfavorable effects on some of the members of the craft represented. Variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in seniority, the type of work performed, the competence and skill with which it is performed, are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit. . . . Without attempting to mark the allowable limits of differences in the terms of contracts based on differences of conditions to which they apply, it is enough for present purposes to say that the statutory power to represent a craft and to make contracts as to wages, hours and working conditions does not include the authority to make among members of the craft discriminations not based on such relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious."

While, as pointed out in *Aeronautical Lodge* v. *Campbell, supra,* there are variations in the use of seniority, such as plant seniority, shop seniority, seniority conditioned upon existence of a probationary period of employment, etc., we are cited to no case which approves the

creation of seniority rights in a collective bargaining contract upon the basis of acts done or service rendered prior to entering upon the employment in which the seniority is claimed. We think this is "superseniority" just as the seniority claimed in *Trailmobile Co.* v. *Whirls, supra,* was superseniority. It penalizes Huffman for working for Ford before his military service.

Under the uncontradicted facts the seniority system as to Huffman and those similarly situated is discriminatory. Plainly a contract which, in case of layoff, prefers men without experience over men with experience, no other facts appearing and no other valid reasons for preference existing, is discriminatory. When an employee who entered the Ford plant in 1945 is retained in layoffs over Huffman, who entered in 1943, Huffman is discriminated against.

This is a case *sui generis.* From a feeling of generosity toward men called to the war, the union and the employer have united in a sweeping contract which ultimately and in ways probably not contemplated discriminates against veterans who also gave their all in the service of the country. To hold that this feature of the contract is valid is to open wide the door to agreements between union and company not in the interest of the union as a whole.

The contract is invalid as to Huffman and those veterans similarly situated.

The judgment of the District Court is reversed and the case is remanded for further proceedings in accordance with this opinion.

McAllister, J., dissenting. I am of the opinion that the order of the district court dismissing appellant's petition should be affirmed for the reasons, as therein set forth, that the collective bargaining agreement expressed an honest desire for the protection of the interests of all members of the union; that it was not a device of hostility to veterans; and that the seniority system therein provided was not arbitrary, discriminatory, or unlawful.

PETITION FOR REHEARING BY FORD MOTOR COMPANY

(Filed March 21, 1952)

INDEX

LIST OF AUTHORITIES.

United States Court of Appeals

FOR THE SIXTH CIRCUIT.

No. 11,448.

GEORGE HUFFMAN, INDIVIDUALLY AND ON BEHALF OF A CLASS, ETC., - - - *Appellant,*

v.

FORD MOTOR COMPANY, AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, AN UNINCORPORATED VOLUNTARY ASSOCIATION, - - - - - - *Appellees.*

Appeal from the District Court of the United States for the Western District of Kentucky at Louisville.

PETITION FOR REHEARING BY FORD MOTOR COMPANY.

The Court erroneously held, in the March 3, 1952, Opinion, that the Ford contract unlawfully discriminates against those who left Ford's employ to enter the

Armed Services and were later re-employed without loss of seniority. The holding is erroneous because:

(1) The contract affects employees who are non-veterans, in the same manner and to the same extent, as it affects the employees in Huffman's class.

(2) "Discrimination," as such, is not involved in the extension of limited seniority to veterans not previously employed.

(1)

The contract affects employees who are non-veterans, in the same manner and to the same extent, as it affects the employees in Huffman's class.

The Court said in the opinion:

> "It is true, as Ford asserts, that there is no discrimination under the present system between Huffman and the non-veterans of his class * * *. Where the discrimination arises is between veterans, like Huffman, who were employed * * * and veterans not employed prior to war service."

It is not correct to say that "discrimination arises" between veterans in Huffman's class, on the one hand, and veterans not previously employed, on the other hand. The difference in treatment of the non-previously employed veterans, which the Court refers to as "discrimination," is actually between all Ford employees, veterans and non-veterans alike, on the one hand, and the non-previously employed veterans, on the other hand.

one here in question covering approximately a million workers, with employers such as Ford Motor Co., Kaiser Frazier Corporation, Hudson Motor Car Company, Chrysler Corporation and Bendix Aviation Corporation. This policy represents the considered judgment of workers and employers alike and has the support of veterans organizations and of the Government. It represents a decision to make special and admittedly well deserved provisions for the youthful veteran who never had a job before going into military service. It accorded such veteran consideration for training and qualification attained while in military service. It was decided to treat such veterans as men whose entry into their employment was delayed only by military service and to treat the event of his induction into service (probably the majority of the beneficiaries of this clause being youthful volunteers) as equivalent to having hired in at that time. Since he joined the other workers later they wrote a contract on the not unreasonable assumption that the same young man, had he been free, would have joined them earlier; to-wit, at the time he was actually inducted. They sought to avoid penalizing early military service by not letting it operate to defer the accumulation of his seniority which he might have otherwise accumulated. They adopted this course even though it afforded some slight prejudice to the few men who, after June 21, 1941, and after the President's declaration of unlimited national emergency, first hired in. The man who, voluntarily or otherwise, was early in military service was rewarded, and only at the expense of people who in the same period of national emergency headed for the security of a factory and possible deferment from the draft. Certainly it is not to be argued that this type of discrimination is either against public policy or not within the competency of the bar-

gaining representative to negotiate. The Court's decision not only violates reason but would also upset orderly and well established collective bargaining relationships requiring the rearrangement of hundreds of seniority lists.

II (b) (c) THE DECISION OF THIS COURT IS IN CONFLICT WITH ITS OWN AND OTHER DECISIONS AND WOULD MAKE COLLECTIVE BARGAINING IMPRACTICABLE BECAUSE UNDER THIS DECISION COURTS ARE AUTHORIZED TO SUBSTITUTE THEIR JUDGMENT FOR THAT OF THE NEGOTIATING PARTIES IN FINDING A REASONABLE SOLUTION TO AN INDUSTRIAL PROBLEM.

It is our contention that the decision in this case is in direct conflict with this Court's decision in the case of *Britt* v. *Trailmobile Co.*, 179 Fed. Reporter, 2d, 569, *certiorari denied* 340, U. S. 820, wherein the Court stated at page 572:

> "The appellants, however, contend that the agreement is discriminatory in that the original Trailmobile working force were permitted to date their seniority rights from the date of employment while the Highland men were forced to accept a later date. *Aeronautical Industrial District Lodge 727* v. *Campbell*, 337 U. S. 521, 69 S. Ct. 1287, tells us, however, that the date of employment is not, under the Act, an inflexible basis for determining seniority rights; that discriminations in the process of a collective bargaining agreement which is wholly unrelated to a veteran's absence in the service, is not forbidden by the Act, and that it would be an undue restriction on the process of collective bargaining to forbid changes in collective bargaining arrangements whereby veterans, as well

Members of all three classes were members of the Union which negotiated this contract. The Union's duty was to adjust among these three classes, in some reasonably equitable manner, their respective conflicts in seniority. The purpose of the provision in question was to integrate into the existing seniority system those non-previously employed veterans who otherwise would have no seniority at all within the existing framework.

The situation is not like that in *Steele* v. *L. & N.*, 323 U. S. 192. There, the Union was composed of white employees only, and the contract purposely discriminated against negroes (not members of the Union) by making them ineligible to receive promotions and to hold certain positions. The Union's every act was hostile to the negroes.

Here, the Union represented both white and black, veterans who had previous employment experience, veterans without previous employment experience, and all remaining employees who were not veterans. No hostility to previously employed veterans of Huffman's class entered into this negotiation. No device was used to benefit the non-previously employed veterans at the expense of the previously employed veterans. Huffman suffered no more from this than the remaining employees who were not veterans. All Ford employees, whether veterans or non-veterans, suffered equally, and each equally contributed a portion of his seniority status to the non-previously employed veterans.

The opinion of the Court states Huffman's principal contention to be that the clause of the contract under attack is not for the benefit of the entire Union, and

the Court agreed with this contention. Herein we differ with the Court.

Referring to the case of *Steele* v. *L. & N.*, 323 U. S. 192, the opinion points out that the statutory representative of a craft may make contracts which may have unfavorable effects on some of the members of the craft represented and that variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied, such as differences in seniority, are within the scope of the bargaining representatives of a craft, all of whose members are not identical in interest or merit.

It is, of course, apparent that the interests of all members of a union cannot be identical. It is impossible to have unanimity of opinion and absolute similarity of treatment of all of the members of the group represented by any union. This being the case, discretion must be vested in the bargaining representative, and when this bargaining representative makes a contract with the union, as the representative of a bargaining unit of employees, a court should not substitute its discretion for that of the union, concurred in by the employer, unless the exercise of the discretion obviously violates the basic principles of collective bargaining.

The Union in the instant case was convinced that the giving of accumulated seniority for service in the armed forces, whether or not the employee had been previously employed by Ford, was beneficial to the group of employees as a whole. The reasoning behind

the belief of the Union is set forth beginning at page twenty-seven of the brief heretofore filed by Ford Motor Company. The provision of the contract under attack giving accumulated seniority to service men is not peculiar to the Ford contract but has been agreed to, and inserted in many contracts between management and labor. To strike down this provision will cause incalculable confusion in seniority rosters now going back to 1941 and will create discord in the labor-management relations of the Ford Motor Company.

Seniority is a creature of contract and not a matter of right. In the absence of contract, no seniority whatever exists. If bargaining representatives of all employees, having in mind differences which exist among the employees with respect to military service, choose to extend seniority rights to employees with prior military service for the purpose of preventing friction and dissatisfaction, and of improving conditions of employment, the Courts should not interfere and try to remake the contract for them.

The Kentucky Court of Appeals said in *Aulich* v. *Craigmyle*, 248 Ky. 676, 59 S. W. 2d 560, 563, that an employee's seniority right was a matter of contract between him and his Union, and,

> "was in no sense a vested, contractual, or property right, justifying the court, either then or now, in interfering to preserve it."*

The Supreme Court of Tennessee, after hearing the same arguments which Huffman presented here,

*Approved in *N. & W. Ry. Co.* v. *Harris*, 260 Ky. 132, 84 S. W. 2d 69, and in *Cannon* v. *Brotherhood*, 262 Ky. 113, 89 S. W. 2d 620.

squarely held in *Haynes* v. *United Chemical Workers*, 190 Tenn. 165, 228 S. W. 2d 101, that a similar contract, extending partial seniority credit to ex-veterans, not previously employed by the company, was not discriminatory, or invalid. It said†:

> "It seems to us that the provisions of this Section, instead of being against 'public policy,' are in accord with the accepted policy of the State and Nation. It has been the policy of both the State government and the Federal government to give veterans preferences and other benefits not afforded to other citizens because of their military service . . .
>
> "The provision of the contract complained of herein, instead of being an exclusion of a specified group as was in the Steele case [*L. & N.* v. *Steele*, 323 U. S. 192], is, in effect, a provision in accord with the feeling of most of the people in the Country. To strike this provision down and say that it is void and against public policy, to include in a contract slight preference in favor of veterans, would be slapping the feeling of the people of the State and Nation in the face."

The District Court, Western District of North Carolina, on June 16, 1948, passed on exactly the same arguments, arising from the same Ford contract, in *Price* v. *Ford Motor Company*. The District Court upheld the contract and adjudged that this same agreement between Ford Motor Company and the same Union, was valid and binding upon all of the non-veteran Ford

†See also: *Tennessee Title Co.* v. *First Federal Savings & Loan Assn.*, 185 Tenn. 145, 203 S. W. 2d 697; *Jennings* v. *Jennings*, 91 N. E. 2d 899 (Ohio, 1949).

employees. For the Court's convenience, we have lodged with the Clerk a certified transcript of the record in that case.

CONCLUSION.

The Court should not strike down a bargaining agreement which, with consent of all employees involved, extends to a less favored group some of the benefits of seniority, thereby distributing the benefits of seniority more equitably among the employees.

The Court should withdraw that portion of the opinion which declares this part of the contract invalid, and it should affirm the opinion of the District Court.

We certify that this Petition is not filed for the purpose of delay.

Respectfully submitted,

LOUIS SEELBACH,
EUGENE B. COCHRAN,
Counsel for Ford Motor Co.

March 19, 1952,
Louisville, Ky.

PETITION FOR REHEARING BY U. A. W.—C. I. O.
(Filed March 22, 1952)

In the

United States Court of Appeals

For the Sixth Circuit

No. 11,448

GEORGE HUFFMAN, Individually and on Behalf of a Class, etc.

Appellant,

vs.

FORD MOTOR COMPANY, ET AL.,

Appellees.

PETITION FOR REHEARING

On March 13, 1952, this Court, in an opinion by Allen, Circuit Judge, with a dissenting opinion by McCallister, Circuit Judge, rendered a decision reversing and remanding the decision of the District Court herein. This petition for rehearing is based upon the following controlling considerations, not taken into account by the Court in its decision, which, it is submitted, compel a result opposite to that reached by the Court:

I. THE DISTRICT COURT AND THIS COURT LACK JURISDICTION TO ENTERTAIN THE QUESTION OF THE LEGALITY OF VARIOUS PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT IN AN ACTION BROUGHT BY ONE OF THE EMPLOYEES WHO FALLS UNDER THE GROUP REPRESENTED BY THE BARGAINING REPRESENTATIVE.

II. THE DECISION OF THIS COURT:

a. VIOLATES STANDARDS OF COLLECTIVE BARGAINING RELATING TO VETERANS ENDORSED AND SUPPORTED ON A NATION WIDE BASIS BY GOVERNMENTAL AUTHORITIES, VETERANS ORGANIZATIONS, EMPLOYER ASSOCIATIONS AND LABOR ORGANIZATIONS, AND CARRIED INTO PRACTICE IN HUNDREDS OF COLLECTIVE BARGAINING AGREEMENTS;

b. IS IN CONFLICT WITH ITS OWN AND OTHER DECISIONS;

c. AND WOULD MAKE COLLECTIVE BARGAINING IMPRACTICABLE BECAUSE UNDER THIS DECISION COURTS ARE AUTHORIZED TO SUBSTITUTE THEIR JUDGMENT FOR THAT OF THE NEGOTIATING PARTIES IN FINDING A REASONABLE SOLUTION TO AN INDUSTRIAL PROBLEM.

The action was instituted by Appellant for declaratory judgment claiming that his seniority rights preserved to him by Congress were denied in the collective bargaining contract made between the Appellee Employer and Appellee Union (R. page 7 and 8, paragraph No. 18). This Court, in its opinion, in the paragraph at the bottom of page 3, found that the District Court correctly held that this contention of Appellant could not be sustained. The Court, in effect, then stated, that as a veteran, the Appellant had no greater rights than any other employee.

The Court in its opinion, then proceeded to hold that the Union and the Employer cannot by contract create seniority in men not employed when they entered the armed services, as against men also veterans, who were

employed when they entered the armed services. In effect, this Court has stated that the National Labor Relations Act forbids a Union and Company from making a contract providing a seniority system which gives privileges to new employees by reason of their prior services in the military forces of the United States. This Court held that to give an employee seniority status by reason of military services, is just as bad as denying an employee seniority by reason of his color.

The Court, having decided the primary issue as to Appellant's claim as a veteran against Appellant, the Court must consider the defense set up in (R. 24, par. 4), namely that:

I. THE DISTRICT COURT AND THIS COURT LACK JURISDICTION TO ENTERTAIN THE QUESTION OF THE LEGALITY OF VARIOUS PROVISIONS OF A COLLECTIVE BARGAINING AGREEMENT IN AN ACTION BROUGHT BY ONE OF THE EMPLOYEES WHO FALLS UNDER THE GROUP REPRESENTED BY THE BARGAINING REPRESENTATIVE.

In the case of *MacKay* v. *Loew's, Inc.*; 182 F. 2d, 170, the Ninth Circuit Court stated that the provision of the National Labor Relations Act insuring to employees the right to bargain collectively, creates no remedy for refusal to bargain collectively, except through unfair labor practice proceedings before the National Labor Relations Board. In *Studio Carpenters Local* v. *Loew's*, 182 F. 2d, 168, the Court stated that exclusive remedies for deprivation of rights to self-organization are contained in the National Labor Relations Act, and the provisions of the Act insuring right to bargain collectively could

not be invoked to support the District's Court jurisdiction.

In *Schatte* v. *International Alliance, etc.*, 182 F. 2d, 158, the Court set forth the rule that the exclusive remedy for commission of an unfair labor practice, prior to enactment of the Labor Management Relations Act was in proceeding before the National Labor Relations Board, and the same was true subsequent to such enactment, except insofar as District Courts were given jurisdiction over certain suits over injunction by the Government, etc.

In the case of *A. F. L.* v. *Western Union Telegraph*, 179 F. 2d, 535, at page 538, this Court stated that a cause of action for violation of a contract between the Union and the Company, is within the express provisions of Section 301(a) of the Labor Management Relations Act of 1947. But that section of the Act does not permit an individual employee to sue both the employer and the union because he claims that the contract they made should have been more beneficial to him.

In the case of *Western Union Telegraph Company* v. *N. L. R. Board*, 113 F. 2d, 992, at page 994, the Court stated that the Board found that the Union agreed to surrender its power to strike. The Board's decision was that by such conduct the Union had, in effect, made itself unable to continue to represent the workers. In this, the Circuit Court disagreed and stated:

> "We are not prepared to go even as far as that; that is to hold that a Union, which without pressure or inducement from employers, should conclude that arbitration was always a better means than a strike ever could be, could not be a lawful collective bargaining agent under the Act."

If a Union, as a bargaining agent, may bargain away the rights of the employees to strike, upon what theory can a Court hold that the Union cannot enter into a collective bargaining contract which recognizes the special skill, training, etc. which a person had attained while serving in the armed forces, and for that reason, give them consideration in the seniority set-up?

We also call the Court's attention to the recent decision of the 4th Circuit in *Textile Workers Union of America CIO* v. *Arista Mills Co.*, 193 F. 2nd 529, wherein the Court considered the jurisdiction of the District Court under the Labor Management Relations Act of 1947, Sec. 301 (a) etc. At page 533 of the opinion it stated:

> "We do not mean to say that, merely because a bargaining contract may forbid unfair labor practices, the courts have jurisdiction to afford relief against them under guise of relieving against breaches of contract. As we said in *Amazon Cotton Mill Co.* v. *Textile Workers Union, supra,* 'it is perfectly clear, both from the history of the National Labor Relations Act and from the decisions rendered thereunder, that the purpose of that act was 'to establish a single paramount administrative or quasi-judicial authority in connection with the development of federal American law regarding collective bargaining'; that the only rights made enforceable by the act were those determined by the National Labor Relations Board to exist under the facts of each case; and that the federal trial courts were without jurisdiction to redress by injunction, or otherwise the unfair labor practices which it defined.' *We think it clear that parties may not by including a provision against unfair labor practices in a bargaining*

agreement vest in the courts jurisdiction to deal with matters which Congress has placed within the exclusive jurisdiction of the National Labor Relations Board."

II (a) THE DECISION OF THIS COURT VIOLATES STANDARDS OF COLLECTIVE BARGAINING RELATING TO VETERANS, ENDORSED AND SUPPORTED ON A NATION WIDE BASIS BY GOVERNMENTAL AUTHORITIES, VETERANS ORGANIZATIONS, EMPLOYER ASSOCIATIONS AND LABOR ORGANIZATIONS AND CARRIED INTO PRACTICE IN HUNDREDS OF COLLECTIVE BARGAINING AGREEMENTS.

The seniority provision which is under attack before this Court was negotiated with the Ford Motor Company pursuant to a resolution of the International Convention of the International Union, UAW-CIO held in 1944. It embodies a collective bargaining policy universally endorsed and followed on a nation wide scale, as is evidenced by the following quotation from a publication of the U. S. Department of Labor entitled:

U. S. Department of Labor
RETRAINING AND REEMPLOYMENT ADMINISTRATION
Federal Trade Commission Building
Washington 25, D. C.

STATEMENT OF EMPLOYMENT PRINCIPLES

. . . "To assist in this process of reintegration, to minimize the competitive disadvantage which is inherent in long-term absence from civilian employment, and to help veterans and other displaced workers to obtain and hold suitable jobs commensurate with their abili-

ties, the employment principles appearing in this brochure are offered for the guidance of Government management, labor, and every other factor of the national economy.

"These principles have been prepared by this Administration after consultation with an Advisory Committee consisting of representatives of labor, management, and veterans' organizations. The membership of this Committee is as follows: American Federation of Labor — Robert Watt, Frank P. Fenton, Boris Shiskin; Congress of Industrial Organizations — Ted F. Silvey and Meyer Bernstein; Railway Labor Executives' Association — A. E. Lyon and E. L. Doyle; Business Advisory Council to the Secretary of Commerce — Cyrus C. Ching and Walter White; National Association of Manufacturers — A. E. Whitehill and John M. Convery; U. S. Chamber of Commerce — T. W. Howard; American Legion — Ralph H. Labers and Elbert Burns; Disabled American Veterans —Millard W. Rice; Veterans of Foreign Wars —Omar B. Ketchum.

"In commenting on these principles, Secretary of Labor Lewis B. Schwellenbach stated that he wholeheartedly endorses the concepts underlying them and expresses the hope that they will be of real assistance to management and labor in all of their discussions. . . .

(13) . . . "*Newly hired veterans who have served a probationary period and qualified for employment should be allowed seniority credit,* at least for purposes of job retention, *equal to time spent in the armed services plus time spent in recuperation from service-connected injuries* or disabilities either through hospitalization or vocational training."

Pursuant to this policy the UAW alone negotiated in the neighborhood of 300 seniority clauses similar to the

as non-veterans, are benefited by promoting greater protection of their rights and smoother operation of labor-management relations. *Collective bargaining is a continuous process and a veteran becomes the beneficiary of those gains, the achievement of which is the constant thrust of collective bargaining.* Collective bargaining agreements are made by a bargaining agent selected by a majority of the working force and are binding upon all employees. One who benefits as the result of such collective agreements must, in the language of the Oakley case, accept not only its advantages but its limitations."

The Trailmobile case quite properly reaches a result different than that reached by the Court in *Steele* v. *L. & N. Railroad Co.*, 323 U.S. 191 which case the Court cites as authority in support of its decision in the present case. We submit that the *Steele* case is inapplicable to the present situation for in that case the Court stated that while the statute does not deny to a bargaining labor organization, the right to determine eligibility to its membership, it does require the Union in collective bargaining and in making contracts with the carrier, to represent non-union or minority union members of the craft *without hostile discrimination.* In that case the Court stated that for a Union, that represents both white and colored employees, to enter into a contract which discriminates against the colored, is an unlawful contract. It stated that the people in the Constitution and Congress in legislation, have always condemned discrimination by reason of race, creed or color. In the present case, the Court in its opinion has stated that legislative groups have always favored and approved the giving of benefits to veterans. How can we compare a giving to a person by

reason of military training, recognition in the seniority status, to a contract which discriminates by reason of creed or color?

Furthermore in the Steele case the Court found the action of the Union to be unreasonable and capricious. This is the proper test to be applied to a Union's action and this test has found support in many other decisions. *Order of Ry. Conductors* v. *Jones*, 239 Pac. 883 (1925); *Piercy* v. *L. & N. Ry.*, 198 Ky. 477; *Robinson* v. *Dahm*, 159 N. Y. Supp. 1053 (1916); *McMurray* v. *Brotherhood of R.R. Trainmen*, 50 F. (2d) 968, 970 (1931); *Shaup* v. *Grand International B. of L. E.*, 135 So. 327, 328 (1931); *Capra* v. *Local Lodge* 76, P. (2d) 739, 740 (1938); *Ryan* v. *N. Y. Central R.R.*, 255 N.W. 365, 368 (1934).

See also Note, *Collective Bargaining Agreements, The Seniority Clause*, 41 Col. L. Rev. 304 (1941) for cases cited at 316 and 317.

In the opinion of the Court, it is conceded that legislative bodies may give rights to former veterans, and in support thereof, is cited the case of *State, Ex Rel. King* v. *Emmons*, 128 Ohio State 216. Circuit Judge Allen concurred in that decision when a member of the Supreme Court of Ohio. It is our contention that the decision in the present case is in direct conflict with the reasoning of the *Emmons* case. We quote from that case at page 224.

> *"The point is made* in the relator's argument *that the allowance to veterans* of twenty per cent. of the mark made on the written examination *is arbitrary and unreasonable in that it makes no distinction between positions for which military training might reasonably be regarded as good preparation and those for which it might not.* It is also urged that no difference

> is made in the allowance to one who served only a day and to one who served for many months. There is force in these contentions. But if it be conceded that an *examination* to ascertain merit and fitness may consist of other inquiries, in addition to those relating merely to knowledge, can we say that the legislature is without power to prescribe a reasonable weight to be given to military service? In our opinion the weight prescribed in this statute is neither so arbitrary or so unreasonable as to violate the constitution. We may not strike down the statute merely because, in our judgment, different allowances might be wiser. *While the benefit derived from military training varies, doubtless from case to case, we find ourselves unable to say that its value is so little in any case as to make the action of the legislature arbitrary and void.*"

The standard which the Court used in the *Emmons* case is the ordinary standard for judging the constitutionality of legislative action, namely, whether the distinctions and classifications drawn by the legislature have a reasonable foundation in fact. These same constitutional standards were by analogy applied in the *Steele* case and in the *Trailmobile* case to the action of labor organizations.

> "We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates." *Steele* v. *L. & N. R.R.*, 323 U.S. 192 at 202.

These same criteria in the instant case require that a *rational* solution to the industrial problem involved,

namely the treatment of certain veterans, be found. In this connection the definition of reasonable or rational action found in the dissenting opinion of Brandeis, J. in *Quaker City Cab Co.* v. *Pennsylvania*, 277 U.S. 389, 406, is of interest:

> "The equality clause requires merely that the classification should be reasonable. We call that action reasonable which an informed intelligent just-minded, civilized man could rationally favor."

Thus, although, for instance the solution found by the Union in the Trailmobile litigation was not necessarily the most reasonable; the result was at least rational. No more than this is required of economic legislation under the Equal Protection Clause of the Constitution and no more than this is required of a Union in a situation such as the present one.

It is quite clear that the Union in the instant case has completely satisfied this standard. Not only does the special treatment of veterans here under attack have a rational foundation in fact, but it seems clear that the solution to this problem adopted by the negotiating parties here as well as in innumerable other situations was the most reasonable treatment conceivable. And even should the Court disagree that the present solution was the most reasonable possible, it cannot substitute its judgment for that of the negotiating parties as long as the solution here found was at least rational.

For the Court to do otherwise would in effect make it impossible for a large union representing hundreds of thousands of workers to engage in collective bargaining. It is inevitable that such a union must represent classifications and factions within the total group which the

Union must try to do its best to represent fairly in the face of divergent interests. For a Court to substitute its own judgment for that of the negotiating parties when the result reached through the negotiations is eminently rational merely because the Court thinks that a more reasonable solution could have been found by the parties would make the job of a great labor organization impossible. Courts have recognized this in a large number of decisions. *Aden* v. *Louisville & N. R.R.*, 276 S.W. 511 (Ky. App. 1921); *Donovan* v. *Travers*, 285 Mass. 167, 188 N.E., 705 (1934); *Hartley* v. *Brotherhood, etc.*, 283 Mich. 201, 277, N.W., 885 (1938); *Yazoo* v. *Mitchell*, 173 Miss., 594; *Burton* v. *Oregon-Washington R. R.*, 148 Ore. 648, 38 P. (2d) 72, (1934).

Furthermore, we bring to the attention of the Court the fact that seniority systems are by their nature inherently discriminatory in many respects. Departmental seniority in many instances may cause hardships against those in other departments in case of layoffs. The worker with greater skill, but lesser seniority, is usually discriminated against. On the other hand, many contracts make provisions for exceptional workers, thus discriminating against those with greater length of service. A seniority system might well be based on the number of dependents a worker has. In that case, one with greater length of service but fewer dependents would be "discriminated" against. Unless seniority is artificially defined in terms of length of service on plant-wide basis, a great variety of systematic and regular methods for operating a seniority system is available to the negotiating parties, all of which must be sustained by a Court insofar as they are rational and do not evidence hostile or unreasonable discrimination against any group. To prevent the negotiating parties from exercising the widest

possible discretion in this field would be to render meaningless the collective bargaining process. We submit that the present decision, if allowed to stand, would have this adverse effect.

We respectfully petition the Court for a rehearing. This Petition is presented in good faith and not for delay.

SOL GOODMAN,
1016 Union Trust Bldg.,
Cincinnati 2, Ohio,
Attorney for Appellee, UAW-CIO.

ORDER DENYING PETITIONS FOR REHEARING

(Filed April 15, 1952)

The petitions for rehearing are denied.

CLERK'S CERTIFICATE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

I, CARL W. REUSS, Clerk of the United States Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of *George Huffman, Individually, etc.* v. *Ford Motor Company, a Corporation, etc.*, No. 11,448, as the same remains upon the files and records of said United States Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 6th day of June, A.D. 1952.

CARL W. REUSS,
Clerk of the United States Court of Appeals for the Sixth Circuit.

(SEAL)

SUPREME COURT OF THE UNITED STATES. OCTOBER TERM. 1952

No. 193

FORD MOTOR COMPANY, Petitioner,

vs.

GEORGE HUFFMAN, Individually, and on Behalf of a Class, etc., et al.

ORDER ALLOWING CERTIORARI—Filed October 13, 1952

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 194

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, etc., Petitioner,

vs.

GEORGE HUFFMAN, Individually, and on Behalf of a Class, etc., et al.

ORDER ALLOWING CERTIORARI—Filed October 13, 1952

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